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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,350	04/18/2002	Bernth Lorentz Nyberg	DEXNON/109/PC/US	6869

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EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 09/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Keep in case

Office Action Summary

Application No.

10/031,350

Applicant(s)

NYBERG ET AL.

Examiner

Ula C Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 18 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Abstract

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 12, and 19, it is unclear what is meant by 75% RH. Clarification is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4-6, and 11-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson (US 5,876,551) in view of Ying et al. (US 6,245,401). Jackson discloses breathable wall covering with high moisture permeability that can be printed with a design (abstract). The nonwoven substrate is comprised of an array of hydroentangled synthetic polymeric fibers, such as

polyester, and cellulosic fibers and blends thereof (col 4, ln 29-49). A polymeric ply is formed on and fused to the nonwoven substrate (col 3, ln 56-58). Jackson discloses the claimed invention except for the teaching that the polymeric material comprises a copolymer of an olefin and alkyl acrylate, alkyl methacrylate, and wherein the polymeric material comprises filler.

Ying et al. disclose a film material that can be used as a barrier article (abstract) such as floor coverings (col 5, ln 50-54). The film material has a breathability, i.e. WVTR, of at least 800 g/m²/24 hours (col 5, ln 17-23). The film material can be stretched in either or both the machine direction and cross-direction (col 6, ln 57-59). The film material is preferably ethylene butyl acrylate (col 7, ln 24), which is the same film disclosed in the claims of the present invention. The film also comprises opacifying fillers such as calcium carbonate filler particles (col 10, ln 4-16). The film material can be laminated to nonwoven fabrics (col 13, ln 7-15) and the outer nonwoven layers may be treated by embossing and printing in order to achieve desired aesthetics and/or functional characteristics (col 13, ln 50-54). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used Ying's film material, i.e. ethylene butyl acrylate, with calcium carbonate filler particles in the breathable wall covering material of Jackson, motivated by the desire to create a barrier material that has increased breathability.

With regard to claims 6, 11, 15, 17, 22, and 23, it should be noted that optimizing fiber length, linear density, basis weight, filler amount, coating thickness, substrate thickness, and stretch amount, are all result effective variables. For example, the greater the fiber length, and linear density, the greater the dimensional stability of the fabric. The greater the amount of filler, the greater the amount of film breathability. Therefore, it would have been obvious to one having

Art Unit: 1771

ordinary skill in the art at the time the invention was made to have used synthetic fibers having a fiber length of 5 to 20 mm and a linear density of 1 to 6 denier, a substrate having a basis weight of 30-200 g/m² and a coating layer having a basis weight of from 10 to 50 g/m², 40% filler material in the film, coating layer thickness of 10-50µm and a substrate thickness of 80-500µm, and a composite material that is not stretched by more than 1-2% in either the machine direction or cross direction, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized these physical characteristics motivated by the desire to obtain a covering that is breathable and durable.

With regard to claims 1, 12, and 19, although the combination of Jackson and Ying et al. do not explicitly teach the claimed WVTR of at least 14 g/m² or 30 g/m² 24 hours at 25°/75% RH, it is reasonable to presume that the WVTR property is inherent to Jackson and Ying et al. Support for said presumption is found in the use of like materials (i.e. ethylene butyl acrylate polymer comprising filler material and a nonwoven substrate layer comprising cellulose fibers). The burden is upon Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 495. In addition, the presently claimed property of WVTR of at least 14 g/m² or 30 g/m² 24 hours at 25°/75% RH would obvious have been present once the Jackson and Ying et al. product is provided. Note *In re Best*, 195 USPQ at 433, footnote 4 (CCPA 1977).

6. Claims 2, 3, and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson (US 5,876,551) and Ying et al. (US 6,24,401) as applied to claim 1 above, and further in view of Hansen et al. (US 5,498,478).

Art Unit: 1771

Jackson and Ying et al. disclose the claimed invention except for the teaching that the nonwoven material comprises hardwood and softwood fibers and that the nonwoven material is bonded with a vinyl acetate resin. Hansen et al. disclose fibrous material (i.e. a nonwoven as shown in col 25, ln 36-39) having a coating of a binder material (col 4, ln 44-47). The fibers include hardwood and softwood fibers (col 7, ln 44-47) and the binder material is polyvinyl acetate (col 9, ln 41). Examples of suitable particulate material include pigments such as calcium carbonate (col 11, ln 36-39). It would have been obvious to one having ordinary skill in the art to have used Hansen's disclosure of softwood and hardwood fibers bonded together with a vinyl acetate resin in the barrier material of Jackson and Ying et al., motivated by the desire to create a barrier material that has more lamination strength. It also would have been obvious to have used Hansen's calcium carbonate filler material in the nonwoven fabric of Jackson and Ying et al., motivated by the desire to create a barrier material having a desired pigmentation.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 703-305-0066. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Application/Control Number: 10/031,350

Page 6

Art Unit: 1771

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Ula Ruddock